

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 96-253
Table of Allotments)	RM - 8962
FM Broadcast Stations)	
(Bainbridge, Georgia))	

To: The Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Chattahoochee Broadcast Associates ("CBA"), the petitioner for Channel 270A at Bainbridge, Georgia, by its counsel, hereby submits its Opposition to the Petition for Reconsideration filed October 14, 1997¹ by Paxson Communications Corporation ("Paxson")². In its Petition for Reconsideration, Paxson argues that the Commission failed to follow its policy to resolve conflicts when presented with a "non-prejudicial" proposal. CBA will demonstrate that the Commission has no such policy when it involves late proposals adding new communities. In support hereof, CBA states as follows:

1. Paxson does not challenge the Commission's decision to favor the new allotment for Bainbridge over the Quincy application. Rather Paxson contends that the Commission

¹ This Opposition is timely filed in response to the publication of the Petition for Reconsideration in the Federal Register on November 5, 1997 (62 FR 59870).

² The previous party in this proceeding was known as Paxson Tallahassee License, Inc., licensee of Station WXSX(FM), Quincy, Florida. In its Petition for Reconsideration, Paxson does not report when and how there was a successor-in-interest as licensee.

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should have resolved the conflict with a late filed proposed solution submitted by Clyde Scott Jr. after the close of the comment period and which added a new community to the proceeding.

2. As of the close of the comment period in this proceeding, the only community proposed to be modified or added to the Table of Allotments was Bainbridge, Georgia. The Commission also had a timely conflicting application on file for Channel 268C1 at Quincy, Florida at a site location which would have required the Commission to deny the Bainbridge proposal. At that point, the Commission could have, on its own, or in response to a party's suggestion accommodated the Bainbridge proposal and the Quincy application with non-conflicting alternate sites or channels. However, the docket was closed to the addition of channels to new communities which, in this case, is Dawson, Georgia.

3. Section 553 of the Administrative Procedure Act ("APA") (5 U.S.C. § 553) states:

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include --

- (1) a statement of the time, place, and nature of public rule making proceedings;
- (2) reference to the legal authority under which the rule is proposed; and
- (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply --

- (A) to interpretative rules, general statements of policy, or rules of agency organization, procedures or practice; or
- (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest.

- (c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.
- (d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except --
 - (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
 - (2) interpretative rules and statements of policy; or
 - (3) as otherwise provided by the agency for good cause found and published with the rule.
- (e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

4. This section provides, inter alia, that the “place” shall be proposed in a Notice of Proposed Rule Making. The Commission has long followed this procedure to prohibit adding new communities to the rule making proceeding after the comment stage. See, e.g., Appendix to the Notice of Proposed Rule Making at para. 3; Ashland, Mo., et al., 8 FCC Rcd 1799 (1993) at note 3; Grenada, Artesia, and Okolona, Ms., 7 FCC Rcd 4838 (1992).

5. Paxson cites no case and, indeed, there is no case in which the Commission reopened a docket for a late filed proposal which added a new community. There is a good reason for this policy, the Commission, like any agency, must achieve administrative finality in its proceedings. The Commission, when faced with a proposal which adds a new community, could only accept the proposal by issuing a Second Notice of Proposed Rule Making in order to seek comments in accordance with the APA and accept counterproposals to the new community. If a counterproposal or some other proposal adding a new city were then filed, another notice would be required. The Commission could never be certain that it could achieve finality and the potential for abuse and delay would be enormous. Thus, the proper conduct of administration procedure requires that the Commission limit “non-prejudicial” solutions to those which suggest

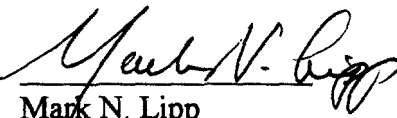
alternate channels or sites for only the communities under consideration as of the initial comment date.

6. CBA also wishes to point out, as it did in its Motion to Strike that the substitution of channels at Dawson has not been shown by Scott or Paxson to provide 70 dBu coverage and may not accommodate the applications that have been filed for Channel 251A at Dawson in the recently closed filing window.

7. Accordingly, CBA urges the Commission to reaffirm its decision to allot Channel 270A to Bainbridge, Georgia³.

Respectfully Submitted,

CHATTAHOOCHEE BROADCAST ASSOCIATES

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Its Counsel

November 20, 1997

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³ On this date, CBA has submitted its application for a construction permit on Channel 270A, Bainbridge, Georgia.

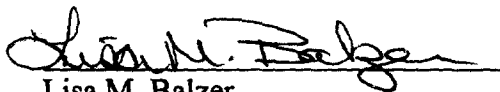
Certificate of Service

I, Lisa Marie Balzer, a secretary at the law firm of Ginsburg, Feldman and Bress, Chartered, do hereby certify that on this 20th day of November, 1997 a copy of the foregoing Opposition to Petition for Reconsideration was mailed, first class postage prepaid to:

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